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28 CFR Ch. I (7–1–10 Edition)

Once the appeals procedures are completed, an individual whose claim for compensation under the Act is affirmed on appeal may seek judicial review in a district court of the United States.

§ 79.74 Representatives and attorney's fees.

(a) *Representation.* In submitting and presenting a claim to the Program, a claimant or beneficiary may, but need not, be represented by an attorney or by a representative of an Indian Tribe or tribal organization. Non-attorneys (other than representatives of an Indian Tribe or tribal organization) are not permitted to represent claimants or beneficiaries before the Program. To the extent that resources are available, the Assistant Director will provide assistance to all persons who file claims for compensation. Only qualified attorneys, as described in paragraph (c) of this section, may receive from a claimant or beneficiary any fee in connection with a successful claim.

(b) *Fees.* (1) Notwithstanding any contract, the attorney of a claimant or beneficiary, along with any assistants or experts retained by the attorney on behalf of the claimant or beneficiary, may not receive from a claimant or beneficiary any fee for services rendered, including costs incurred, in connection with an unsuccessful claim.

(2) Notwithstanding any contract and except as provided in paragraph (b)(3) of this section, the attorney of a claimant or beneficiary, along with any assistants or experts retained by the attorney on behalf of the claimant or beneficiary, may receive from a claimant or beneficiary no more than 2% of the total award for all services rendered, including costs incurred, in connection with a successful claim.

(3)(i) If an attorney entered into a contract with the claimant or beneficiary for services before July 10, 2000, with respect to a particular claim, then that attorney may receive up to 10% of the total award for services rendered, including costs incurred, in connection with a successful claim.

(ii) If an attorney resubmits a previously denied claim, then that attorney may receive up to 10% of the total award to the claimant or beneficiary for services rendered, including costs

incurred, in connection with that subsequently successful claim. Resubmission of a previously denied claim includes only those claims that were previously denied and refiled under the Act.

(4) Any violation of paragraph (b) of this section shall result in a fine of not more than \$5,000.

(c) *Attorney qualifications.* An attorney may not represent a claimant or beneficiary unless the attorney is engaged in the private practice of law and an active member in good standing of the bar of the highest court of a state. Attorneys who are members of multiple state bars, and who are suspended, sanctioned, disbarred, or disqualified from the practice of law for professional misconduct in one state may not represent a claimant or beneficiary even though the attorney continues to remain in good standing of the bar of another state. If a claimant or beneficiary is represented by an attorney, then the attorney must submit the following documents to the Program along with the claim:

(1) A statement of the attorney's active membership in good standing of the bar of the highest court of a state; and

(2) A signed representation agreement, retainer agreement, fee agreement, or contract, documenting the attorney's authorization to represent the claimant or beneficiary. The document must acknowledge that the Act's fee limitations are satisfied.

§ 79.75 Procedures for payment of claims.

(a) All awards for compensation are made in the form of one time lump sum payments and shall be made to the claimant or to the legal guardian of the claimant, unless the claimant is deceased at the time of the payment. In cases involving a claimant who is deceased, payment shall be made to each eligible surviving beneficiary or to the legal guardian acting on his or her behalf, in accordance with the terms and conditions specified in the Act. Once the Program has received the claimant's or eligible surviving beneficiary's election to accept the payment, the Assistant Director shall ensure that the claim is paid within six

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weeks. All time frames for processing claims under the Act are suspended during periods when the Radiation Trust Fund is not funded.

(b) In cases involving the approval of a claim, the Assistant Director shall take all necessary and appropriate steps to determine the correct amount of any offset to be made to the amount awarded under the Act and to verify the identity of the claimant or, in the case of a deceased claimant, the existence of eligible surviving beneficiaries who are entitled by the Act to receive the payment the claimant would have received. The Assistant Director may conduct any investigation, and may require any claimant or eligible surviving beneficiary to provide or execute any affidavit, record, or document or authorize the release of any information the Assistant Director deems necessary to ensure that the compensation payment is made in the correct amount and to the correct person(s). If the claimant or eligible surviving beneficiary fails or refuses to execute an affidavit or release of information, or to provide a record or document requested, or fails to provide access to information, such failure or refusal may be deemed to be a rejection of the payment, unless the claimant or eligible surviving beneficiary does not have and cannot obtain the legal authority to provide, release or authorize access to the required information, records or documents.

(c) Prior to authorizing payment, the Assistant Director shall require the claimant or each eligible surviving beneficiary to execute and provide an affidavit (or declaration under oath on the standard claim form) setting forth the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation), against any person, that is based on injuries incurred by the claimant on account of:

(1) Exposure to radiation from an atmospheric detonation of a nuclear device while present in an affected area (as defined in § 79.11(a)) at any time during the periods described in § 79.11(c) or § 79.11(h);

(2) Exposure to radiation while participating onsite in an atmospheric detonation of a nuclear device (as de-

fined in § 79.11(b)) at any time during the periods described in § 79.11(h) (This paragraph (c) only applies to claims filed under section 4(a)(1)(A)(i)(III) of the Act); or

(3) Exposure to radiation during employment in a uranium mine at any time during the period described in section 5 of the Act. For purposes of this paragraph, a "claim" includes, but is not limited to, any request or demand for money made or sought in a civil action or made or sought in anticipation of the filing of a civil action, but shall not include requests or demands made pursuant to a life insurance or health insurance contract. If any such award or settlement payment was made, the Assistant Director shall subtract the sum of such award or settlement payments from the payment to be made under the Act.

(d) In the case of a claim filed under section 4(a)(2)(C) of the Act, the Assistant Director shall require the claimant or each eligible surviving beneficiary to execute and provide an affidavit (or declaration under oath on the standard claim form) setting forth the amount of any payment made pursuant to a final award or settlement on a claim (other than a claim for worker's compensation) against any person or any payment made by the Department of Veterans Affairs, that is based on injuries incurred by the claimant on account of exposure to radiation as a result of onsite participation in a test involving the atmospheric detonation of a nuclear device. For purposes of this paragraph, a "claim" includes, but is not limited to, any request or demand for money made or sought in a civil action or made or sought in anticipation of a civil action, but shall not include requests or demands made pursuant to a life-or health-insurance contract.

(1) Payments by the Department of Veterans Affairs shall include:

(i) Any disability payments or compensation benefits paid to the claimant and his or her dependents while the claimant is alive; and

(ii) Any Dependency and Indemnity Compensation payments made to survivors due to death related to the illness for which the claim under the Act is submitted.

(2) Payments by the Department of Veterans Affairs shall not include:

- (i) Active duty pay, retired pay, retainer pay, or payments under the Survivor Benefits Plan;
- (ii) Death gratuities;
- (iii) SGLI, VGLI, or mortgage, life, or health insurance payments;
- (iv) Burial benefits or reimbursement for burial expenses;
- (v) Loans or loan guarantees;
- (vi) Education benefits and payments;
- (vii) Vocational rehabilitation benefits and payments;
- (viii) Medical, hospital, and dental benefits; or
- (ix) Commissary and PX privileges.

(e) If any such award, settlement, or payment was made as described in paragraphs (c) or (d) of this section, the Assistant Director shall calculate the actuarial present value of such payment(s), and subtract the actuarial present value from the payment to be made under the Act. The actuarial present value shall be calculated using the worksheet in appendix C to this part in the following manner:

(1) Step 1. The sums of the past payments received in each year are entered in the appropriate rows in column (2). Additional rows will be added as needed to calculate the present value of payments received in the years prior to 1960 and after 1990.

(2) Step 2. The present CPI-U (to be obtained monthly from the Bureau of Labor Statistics, Department of Labor) is entered in column (3).

(3) Step 3. The CPI (Major Expenditure Classes—All Items) for each year in which payments were received is entered in the appropriate row in column (4). (This measure is provided for 1960 through 1990. The measure for subsequent years will be obtained from the Bureau of Labor Statistics.)

(4) Step 4. For each row, the amount in column (2) is multiplied by the corresponding inflator (column (3) divided by column (4)) and the product is entered in column (5).

(5) Step 5. The products in column (5) are added together and the sum is entered on the line labeled “Total of column (5) equals actuarial present value of past payments.”

(6) Step 6. The sum in Step 5 is subtracted from the statutory payment of \$75,000 and the remainder is entered on the line labeled “Net Claim Owed to Claimant.”

(f) When the Assistant Director has verified the identity of the claimant or each eligible surviving beneficiary who is entitled to the compensation payment or to a share of the compensation payment, and has determined the correct amount of the payment or the share of the payment, he or she shall notify the claimant or each eligible surviving beneficiary, or his or her legal guardian, and require such person(s) to sign an Acceptance of Payment Form. Such form shall be signed and returned within 60 days of the date of the form or such greater period as may be allowed by the Assistant Director. Failure to return the signed form within the required time may be deemed to be a rejection of the payment. Signing and returning the form within the required time shall constitute acceptance of the payment, unless the individual who has signed the form dies prior to receiving the actual payment, in which case the person who possesses the payment shall return it to the Assistant Director for redetermination of the correct disbursement of the payment.

(g) Rejected compensation payments or shares of compensation payments shall not be distributed to other eligible surviving beneficiaries, but shall be returned to the Trust Fund for use in paying other claims.

(h) Upon receipt of the Acceptance of Payment Form, the Assistant Director or the Constitutional and Specialized Torts Staff Director or Deputy Director, or their designee, shall authorize the appropriate authorities to issue a check to the claimant or to each eligible surviving beneficiary who has accepted payment out of the funds appropriated for this purpose.

(i) *Multiple payments.* (1) No claimant may receive payment under more than one subpart of this part for illnesses that he or she contracted. In addition to one payment for his or her illnesses, he or she may also receive one payment for each claimant for whom he or she qualifies as an eligible surviving beneficiary.

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(2) An eligible surviving beneficiary whom he or she qualifies as an eligible
who is not also a claimant may receive surviving beneficiary.
one payment for each claimant for